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SUPREME COURT OF THE UNITED STATES.

No. 64.

ROBERT THOMPSON, PLAINTIFF,

vs.

THOMAS GRIFFIN.

ON A CERTIFICATE OF DIVISION IN OPINION FROM THE CIRCUIT COURT U. S. SOUTHERN DISTRICT OF MISSISSIPPI.

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In the circuit court of the United States for the southern district of Mississippi, May term A. D. 1842.

THOMAS GRIFFIN & HUGH ERVIN,
vs.
ROBERT THOMPSON.

This was a motion made by Thomas Griffin and Hugh Ervin to have satisfaction entered on an execution of *fieri facias*, which issued from the clerk's office of this court against them on the 4th day of June, 1840, in favor of Robert Thompson, for the sum of seventeen hundred and forty dollars $\frac{2}{100}$, with interest thereon at the rate of eight per centum per annum, from the 7th day of November, 1839, until paid, together with costs. And also to quash an execution of *fieri facias* which issued against them, in favor of said Thompson, on the same judgment, on the 6th day of November, 1841.

In support of this motion, the said Griffin & Ervin read in evidence to the court an execution of *fieri facias* numbered 874, which was issued from the clerk's office of this court against the said Griffin, and in favor of the said Robert Thompson, on the first day of January, 1840, for the sum of $1,740 $\frac{2}{100}$ and costs, the same having been issued on a judgment rendered by this court on the 7th day of November, 1839; which execution, together with the return of the marshal thereon, which was also read to the court, is in the words and figures following, to wit:

CIRCUIT COURT OF UNITED STATES,
Southern District of Mississippi, } *sct:*

The President of the United States to the marshal of the southern district of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements of Thomas Griffin, late of your district, you cause to be made the sum of seventeen hundred and forty dollars and two cents, which Robert Thompson lately in our circuit court for the district aforesaid hath recovered against him for his damages, which he hath sustained by reason of the non-performance of a certain promise and assumption by the said Thomas Griffin to the said Robert Thompson, lately made, with interest on the said sum at 8 per centum per annum, from the 7th day of November, 1839, until paid; also the sum of thirty-seven 66$\frac{2}{3}$ dollars for costs by him about his suit in that behalf expended, whereof the said Thomas Griffin is convicted, as appears to us of record. And that you have the said moneys before the judges of our said court, on the first

Monday of May next, to render unto the said plaintiff for his damages and costs aforesaid. And have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first Monday of November, A. D. one thousand eight hundred and thirty-nine, and in the sixty-fourth year of the independence of the United States of America.

[L. S.]

Issued the 1st day of January, 1840.

WM. BURNS, *Clerk.*

Marshal's Return.

"Levied this execution on the 25th March, 1840 on the following negro slaves, viz: Peter and Fanny; took a forthcoming bond for their delivery at the door of the State house in the city of Jackson on the 13th April next ensuing, which property not being delivered according to the stipulation of said bond, Hugh Ervin being surety on said bond, it is herewith returned forfeited.

4th May, A. D. 1840. WM. M. GWIN, *Marshal.*

Per Deputy JNO. F. COOK."

"January 2d, 1840. Received on this execution one thousand dollars in post notes of the Mississippi Union Bank.

WM. M. GWIN, *Marshal.*

By his Deputy JNO. F. COOK."

They then read in evidence to the court the forfeited forthcoming bond referred to in the return of the marshal on said execution, which bond bears date the 25th day of March, 1840, and is in the words and figures following, to wit:

Know all men by these presents, that we, Thomas Griffin and Hugh Ervin, citizens of the State of Mississippi, are held and firmly bound unto Robert Thompson in the just and full sum of three thousand four hundred and fifty-five dollars and thirty-seven ½ cents lawful money of the United States, to be paid to the said Robert Thompson, his executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves and each of us, our executors and administrators, jointly and severally, firmly by these presents: sealed with our seals, and dated this 25th day of March, eighteen hundred and forty.

The condition of this obligation is such, that whereas, the said Robert Thompson hath sued out of the circuit court of the United States for the southern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements of the above bound Thomas Griffin, for the sum of seventeen hundred and forty dollars and two cents, with interest thereon, from the seventh day of November eighteen hundred and thirty-nine, on said sum, at the rate of 8 per centum per annum until paid; and the further sum of thirty-seven dollars and sixty-six ⅔ cents for his costs incurred thereon, which writ of fieri facias has been levied by the marshal of said

district upon the following described property, viz: negro slaves Peter, *Ann* and Fanny, the property of the said Thos. Griffin, which said property is suffered to remain [in] the possession of the above bound Thomas Griffin upon his executing this bond with the above named Hugh Ervin sureties therein. And the said defendant and sureties agree that said property shall be delivered and sold in the city of Jackson, at the front door of the State house.

Now, if the above bound Thomas Griffin do, and shall well and truly deliver the said property to William M. Gwin, marshal of the district aforesaid, at the front door of the State house, in the city of Jackson, on the 13th day of April next ensuing, by twelve o'clock noon of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, in that case, the above obligation to be null and void: otherwise to remain in full force and virtue. (Signed) THOMAS GRIFFIN, [SEAL]
HUGH ERVIN, [SEAL]

They then read in evidence to the court the execution of fieri facias, which issued against them on said forfeited bond, in favor of said Robert Thompson, on the 4th day of June, 1840, which execution, with endorsements and returns of the marshal thereon, which were read to the court, is in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, } *ss:*

The President of the United States to the marshal of the southern district of Mississippi, greeting:

Whereas, at the November term, 1839, of the circuit court of the United States for said district, Robert Thompson recovered judgment against Thomas Griffin for the sum of seventeen hundred and forty dollars $\frac{2}{100}$ with interest thereon, at the rate of 8 per centum per annum, from the 7th day of November, A. D. 1839, until paid, together with costs and charges by said plaintiff in and about his said suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record. And whereas, on the first day of January, A. D. 1840, an execution of *fieri facias* issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid, which execution was levied on certain property of said defendant, which said property was suffered to remain in possession of said defendant upon executing a forthcoming bond, according to law, with Hugh Ervin as security, which said bond was returned to our said court at the May term thereof, A. D. 1840, by the marshal aforesaid forfeited, and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties, as against the defendant to said original execution, for said debt, interest and costs. Now, therefore, you are

hereby commanded, that of the goods and chattels, lands, and tenements, of the said Thomas Griffin and Hugh Ervin, late of your district, you cause to be made the amount of the said judgment, interest, and costs, so recovered as aforesaid; also the sum of sixty-six $\frac{2}{100}$ dollars including the costs accrued since the emanation of said execution, and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of November next, to render to said plaintiff, and have also then and there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first [L. S.] Monday of May, A. D. 1840, and in the 64th year of the Independence of the United States.

Issued the 4th day of June, 1840.

(Signed) WM. BURNS, *Cl'k.*
Per SAM. LAUGHMAN, *D. C.*

Endorsement on Fi. Fa.

No security of any kind is to be taken. This execution is entitled to a credit of one thousand dollars, paid 2d January, 1840, in Union post notes. See marshal's return on fi. fa No. 874, to May term, 1840.

(Signed) WM. BURNS, *Cl'k.*

Marshal's Return.

Made on this case four hundred dollars Nov. 3d, 1840. Received balance of this case, in full for costs, &c., say five hundred and fifteen $\frac{30}{100}$ dollars.

Nov. 3d, 1840. WM. M. GWIN, *Marshal.*
By W. L. BATTO, *Dept.*

They then read in evidence to the court the execution of *fieri facias*, which issued against them in favor of Robert Thompson on said judgment, on the 6th day of November, 1841, which execution, with the endorsements and returns thereon, which were also read to the court, is in the words and figures following, to wit:

UNITED STATES OF AMERICA, } *ss:*
Southern District of Mississippi, }

The President of the United States to the marshal of the southern district of Mississippi, greeting:

Whereas, at the November term, 1839, of the circuit court of the United States for said district, Robert Thompson recovered judgment against Thomas Griffin for the sum of seventeen hundred and forty $\frac{2}{100}$ dollars with interest thereon, at the rate of 8 per centum per annum, from the 7th day of November, A. D. 1839, until paid, together with costs and charges, by said plaintiff in and about his said

suit in that behalf expended, whereof the said defendant was convicted, as appears to us of record: And whereas, on the 1st day of January, A. D. 1840, an execution of *fieri facias* issued from our said court, directed to the marshal of said district, for the amount of said judgment, interest, and costs, as aforesaid, which execution was levied on certain property of said defendant, which said property was suffered to remain in possession of said defendant upon executing a forthcoming bond, according to law, with Hugh Ervin, as security, which said bond was returned to our said court at the May term thereof, A. D. 1840, by the marshal aforesaid "forfeited" and thereby has the force and effect of a judgment, according to the statute in such case made and provided, as well against the said sureties as against the defendant to said original execution, for said debt, interest, and costs. Now, therefore, you are hereby commanded as before, &c., that of the goods and chattels, lands and tenements, of the said Thomas Griffin and Hugh Ervin, late of your district, you cause to be made the amount of the said judgment, interest and costs, so recovered as aforesaid; also the sum of one $\frac{25}{100}$ dollars including the costs accrued since the emanation of said execution, and that you have the said sums of money before our said circuit court, at a term to be held on the first Monday of May next, to render to said plaintiff; and have also then and there this writ:

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, at Jackson, the first [L. S.] Monday of November, A. D. 1841, and in the 66th year of the Independence of the United States.

Issued the 6th day of November, 1841.

W. H. BROWN, *Cl'k.*

Endorsement.

This execution is entitled to a credit of $803 47 paid 3d November, 1840, on fi. fa. No. 451, to Nov. term 1840. No security of any kind is to be taken for balance.

W. H. BROWN, *Cl'k.*

Marshal's return, 'stayed by supersedeas,' received April 1, 1842.

A. MILLER, *M'l.*

By Dept. J. S. GOOCH.

They then read in evidence to the court the following receipts, which were proved to be signed by, and in the handwriting of, John F. Cook, who at the date of said receipts, and before, was a deputy of William M. Gwin, marshal of the southern district of Mississippi, which receipts are in the words and figures following, to wit:

"Received of Thomas Griffin the sum of eight hundred dollars, to be applied to part payment of an execution obtained vs. him at

the Nov. term, 1839, of circuit court U. S. as security for I. Griffin, which amount I am to credit said execution with.

December 10th, 1839.

W. M. GWIN, *Marshal.*
By his deputy JNO. F. COOK."

"Received of Thomas Griffin the sum of two hundred dollars in Union bank money, to be applied to a certain execution I hold vs. said Griffin, or I am to return the said money to the said Griffin.

Feb'y 17th, 1840. JNO. F. COOK."

The said sums of eight hundred dollars and two hundred dollars, mentioned in said receipts, constituting the thousand dollars in post notes of the Mississippi Union bank, returned by the marshal as received on 2d of January, 1840, on execution of *fieri facias* herein before referred to, dated 1st January, 1840.

They also read in evidence to the court the following additional receipts, to wit:

"THOMPSON vs. GRIFFIN & Surety. } Circuit Court U. S. fi. fa. to Nov. term, 1840.

Received of Thomas Griffin in the above stated case, the sum of four hundred dollars in Louisiana money.

Nov. 3d, 1840. W. M. GWIN, *Marshal.*
Per Deputy JNO. F. COOK."

"Received of Thomas Griffin the sum of five hundred dollars, to be applied to the payment of an execution, in the hands of the marshal, of Thompson vs. Thomas Griffin and sureties.

Nov. 1840. WM. M. GWIN, *Marshal.*
By his deputy JNO. F. COOK."

The said sums of four hundred dollars and five hundred dollars, mentioned in said receipts, being the same sums of money returned by the marshal as received by him on 3d Nov. 1840, on the execution of *fieri facias*, herein before referred to, which issued on the 4th of June, 1840. The fifteen dollars and 39 cents in addition mentioned by him, in said return, as received, also, 3d Nov. 1840, not being included in said receipts.

They also read in evidence to the court the following recapitulary receipt, to wit:

"ROBERT THOMPSON
vs.
THOMAS GRIFFIN & surety.

Judgment 7th November, 1839 - - - - -		$1,740 02
Interest to 2d January, 1840 - - - -		21 75
		$1,761 77
Less Cr. on fi. fa. 2d January, 1840 - - -		1,000 00
		$761 77
Interest to 2d November - - - - - -		41 70
Cost endorsed - - - - - -	$66 02	$802 47
Last costs - - - - - -	45 90	
		111 92
		$915 39
Cash - - - - - - - - -		400 00
		$515 39

Received on the above stated case the sum of nine hundred and fifteen $\frac{39}{100}$ dollars, the balance due on this execution.

Nov. 1840. W. M. GWIN, *Marshal.*
Per Deputy JNO. F. COOK."

The said sum of nine hundred and fifteen $\frac{39}{100}$ dollars mentioned in said receipt, being made up and consisting of the four hundred dollars and five hundred and fifteen $\frac{39}{100}$ dollars, returned by the marshal, as received by him 3d Nov. 1840, on the execution of *fieri facias* herein before referred to, which issued on 4th June, 1840; and nine hundred dollars of this nine hundred and fifteen $\frac{39}{100}$ dollars, constituting and being the same nine hundred dollars embraced in the two receipts of Jno. F. Cook, deputy marshal, herein before copied, one of said receipts being for the sum of four hundred dollars, and the other for the sum of five hundred dollars.

The said Robert Thompson then, in opposition to said motion, read in evidence to the court, the judgment of this court, pronounced at its November term, 1841, quashing so much of the return of the marshal made on the execution of *fieri facias* numbered 874, which issued on the 1st day of January, 1840, as stated that he had "received on said execution one thousand dollars in post notes of the Mississippi Union Bank," which judgment is in the words and figures following, to wit:

ROBERT THOMPSON
vs.
THOMAS GRIFFIN.

Motion by the plaintiff to quash that part of the marshal's return on *fi. fa.* No. 874, to May term, 1840, which is as follows: 'Janu-

ary 2d, 1840. *Received on this execution one thousand dollars in post notes of the Mississippi Union Bank.*'

Motion sustained and said marshal's return on said *fi. fa.* quashed, and an alias fi. fa. ordered to May term, 1242."

The said Thompson then introduced Joseph Kolt as a witness, who being sworn, stated that he was one of the plaintiff's attorneys of record, who obtained the said judgment of $1,740 $\frac{62}{100}$ against said Thomas Griffin, at the November term, 1839, of this court; and that as the attorney of record of the said plaintiff (Robert Thompson,) he had full authority to collect said judgment, and to control the executions which might issue thereon; that supposing the execution on said judgment when issued would come into the hands of the said "Jno. F. Cook" deputy marshal; he had a conversation with him a short time after the judgment was rendered, say sometime in the month of November, 1839, in which he notified the said Cook distinctly, that good money would be required to be collected on said judgment, and that he must receive no other kind of money on the execution, when it should come into his hands. That he saw said Cook several times during the ensuing winter, but that he (Cook) never mentioned to him that he had made any collection on said judgment. That the first knowledge or intimation witness had of the receipt of the thousand dollars in post notes of the Mississippi Union Bank, mentioned in the return of the said Cook on the execution as collected 2d of January, 1840, was in the month of May, 1840, when going into the marshal's office at Jackson, Miss., he found the said execution had just been returned, with the receipt of the $1000, in post notes of the Mississippi Union bank, endorsed thereon as aforesaid.

Witness at once refused to receive said post notes from the marshal in part satisfaction of said execution, and has ever since refused, and still refuses to receive them. Witness further stated, that at the time referred to, (May, 1840,) said post notes had greatly depreciated in value, and were not worth more than fifty cents to the dollar, and that on the 17th of February, 1840, said post notes were worth but 75 cents to the dollar. That he immediately entered a motion to quash said return of the said deputy marshal (Cook), which motion was sustained by this court at its November term, 1841. Witness further stated that in a conversation he had held with said Thomas Griffin, he (Griffin) had stated that the eight hundred dollars mentioned in said receipt, dated 10th December, 1839, and the two hundred dollars mentioned in said receipt, dated 17th February, 1840, constituting together the thousand dollars returned as made on 2d January, 1840, in "post notes of the Mississippi Union Bank," were paid by him to said John F. Cook, deputy marshal as aforesaid, at times mentioned in the said receipts respectively, in post notes of the said Mississippi Union Bank. It was also in proof that, on the 10th day of December, 1839, the post notes of the Mississippi Union Bank were current in the State of Mississippi, and